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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JOSHUA MARK GILMORE,

12 Petitioner,

2:04-cv-2395-GEB-KJM-P

13 vs.

14 EDWARD S. ALAMEIDA, et al.,

15 Respondent.

ORDER

16 \_\_\_\_\_/  
17 Petitioner has timely filed a notice of appeal of this court's October 29, 2009  
18 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a  
19 certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
22 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues  
23 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

24 A certificate of appealability should be granted for any issue that petitioner can  
25 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

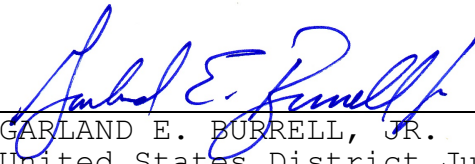
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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

3           Petitioner has made a substantial showing of the denial of a constitutional right  
4 with respect to the following issue: whether petitioner was denied his Sixth Amendment right to  
5 effective assistance of counsel because his trial counsel failed to move for suppression of the  
6 in-court identification of petitioner by Jeffrey Almon as one of his attackers.

7           Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
8 issued in the present action.

9 Dated: November 25, 2009

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12 GARLAND E. BURRELL, JR.  
13 United States District Judge  
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